

Kentucky has two primary statutes dealing with issues of identity theft. KRS 514.160, theft of identity, and KRS 514.170, trafficking in stolen identities. Both of these became effective on July 15, 2002. Many of the cases dealing with the identity theft issues decided by the Kentucky appellate courts are unpublished. Recently, three Kentucky cases have highlighted the adjudication of this type of crime.

In an unpublished opinion by the Kentucky Court of Appeals, Tuney v. Com., No. 2008-CA-000307-MR, decided March 19, 2010, the Court upheld Tuney's conviction for theft of identity. In this case, Sarah Esterhay, a neighbor of Lizbeth Tuney, allowed Tuney to use her name and Mastercard to establish an account with eBay in June of 2004. Esterhay testified that transaction-related payments and/or phone calls initially went to her home until she asked Tuney to remove her address and phone number from the eBay account. In August 2004, when Tuney apparently neglected to make payments on the account as agreed, Esterhay withdrew permission for Tuney to use the credit card and cancelled the card three months later.

Esterhay testified that, after she withdrew her consent to allow Tuney to use that particular Mastercard, she never again gave Tuney authority to use her credit nor did she provide Tuney with specific personal information that would give Tuney the ability to make use of Esterhay's credit. Esterhay asserted that Tuney had the "opportunity" to obtain her social security number and other information from either another credit application she had seen or when she was watching Esterhay's home while Esterhay was on vacation.

In January of 2005, Tuney successfully applied for Pay-Pal buyer credit (financed by G.E. Money Bank and used in connection with the eBay site) using Esterhay's name and social security number. The mailing address for that account was a post office box which Tuney had obtained in August 2004. Although records relating to that P.O. Box include Esterhay's name and phone number, Esterhay received no mail there and the commonwealth further asserted that Esterhay had no knowledge of the box. The credit limit on the Pay-Pal account was \$1,200, and by the end of February 2005, the balance due was \$1,195.44.

Esterhay testified she learned of the Pay-Pal account when she obtained a credit report in April, 2005. At some point when Tuney failed to make payments on that account (either directly to G.E. Money Bank or to Esterhay), Esterhay began making those payments herself. Esterhay later filed a fraud claim with G.E. Money Bank. During the investigation that followed, Esterhay admitted that she had allowed Tuney to open an account in her name, although it is not clear whether she was referring to the initial account opened using Esterhay's Mastercard, or to the subsequent G.E. Money Bank account opened in early 2005. Regardless, because Esterhay admitted having knowledge of the latter account, made payments on that account, and made the fraud claim only after Tuney had stopped making payments, Esterhay's fraud claim was denied.

Esterhay subsequently filed a complaint with the Nicholas County Attorney's Office, which resulted in an investigation by the Kentucky State Police. Detective Clint Graves testified at trial that Esterhay >>